

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 523 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.
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VISHALCHAND DAHYABHAI BAROT

Versus

GIRISHBHAI RAMANBHAI PARIKH & 3 OTHERS

Appearance:

Mr.M.B.Parikh for Mr. M.C.Shah for the appellant.

Mr.Harin P.Raval for respondents No.1 tp 4.

Mr.S.A.Pandya, APP for respondent No.5-State.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/11/96

ORAL JUDGEMENT

The original complainant, Food Inspector herein , has filed the present appeal challenging the judgment and order of acquittal dated 26th August, 1988 in Criminal Case No. 8 of 1986 passed by the learned Chief Judicial Magistrate, Nadiad, acquitting the respondent-accused of the alleged offences punishable under sections 2

(1)(A),(B) , (C) and (M) or section 7(1), (5) and 16 of the Prevention of Food Adulteration Act. It is the case of the complainant that the respondent-accused are dealing in the business of selling gur at Ganj Bazar, Dabhan in Nadiad. On 2-8-85, the complainant, in the company of his peon had gone to the shop of the respondents and purchased about 600 miligrams of gur. It was then divided into three samples and after following the procedure prescribed under the Rules, he sent one of the samples to the Public Analyst, Vadodara. On the basis of the report of the Public Analyst to the effect that the sample does not meet with the standards laid down under the provisions of the Food Adulteration Rules, the complainant filed the complaint before the learned Magistrate.

It appears that at the instance of the respondent-accused, one of the samples was also sent to the Central Laboratory for analysis. The Central Food Laboratory has also submitted its report. The learned Chief Judicial Magistrate, Nadiad, on appreciating the evidence on record, was of the view that there was discrepancy in the report of the Public Analyst as well as the Central Food Laboratory, and therefore the respondent-accused are entitled to be acquitted. As stated above, the complainant has challenged the said order of acquittal by way of this appeal.

Apart from the reasons for acquittal recorded by the learned Magistrate, in my view the present case is directly covered by the decision of this Court (Coram:H.R.Shelat,J.) rendered in Criminal Appeal No. 34/87, decided on 30th May 1994, wherein brother Shelat J. has taken a view that if the report is not prepared and signed by the Analyst on the same day when the sample sent to him is analysed, the report prepared will cease to have any evidentiary value. The said view is taken so that the result of one sample may not be mixed or linked up with the another sample and the accused may not have to suffer because of the mistake on the part of the laboratory. In the instant case, as can be seen from the report of the Public Analyst, he had received the sample sent by the complainant on 3-8-85 and had examined the same on 22-8-85. However, he signed the report on 9-9-85. Thus, it is clear that the Public Analyst did not prepare the report and sign the same on the day on which he examined the sample i.e. on 22-8-85 but had prepared the same after about 18 days. In view of this, the ratio laid down in Criminal Case No.374/87 is squarely applicable to the facts of this case. In view of this, I see no illegality in the order passed by the

learned Magistrate. There being no substance in this appeal, it is liable to be dismissed and is accordingly dismissed.

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